

**HOUSE BILL NO. 16****Input provided at Open Hearing March 11, 2013 by G. Michael Sawicki  
II, LCSW, MHP**

**53-21-102 Definitions (7) MCA**, as revised in this bill is good language. Common sense approaches such as this show a willingness in Montana lawmakers to improve care for Montana residents struggling with dangerous risks from serious mental illnesses. This revision is wise in that it includes 53-21-129(1) Emergency Situation, thus dovetailing parens patriae doctrine and public safety via law enforcement and mental health services. The revisions would allow law enforcement and mental health providers to help people before serious damage is done to self or others.

Up to this time many of us on the "front lines" have had to watch people with serious mental illness deteriorate to markedly dangerous behavioral symptoms before statutory language would allow any delivery of treatment. When this change is adopted, we can do something to reduce the horrible rate of suicide in Montana. We can treat more patients in their own communities and thus limit the 'revolving door' admission problem at Montana State Hospital. We can ease the burden on emergency rooms, hospitals, ambulances, law enforcement, District and Tribal Courts, County Attorneys, and fundamentally empower local mental health centers. This revision can address the problems of the homeless mentally ill by improving access to care. This revision would significantly reduce tragic human suffering caused by the many difficult symptoms of serious mental illness.

**53-21-119 revisions mentioned in House Bill No. 16** may be a bit problematic in terms of our constitutional rights for representative counsel. And, introduces conflicting language because 53-21-122 (2) states: ...The judge shall appoint a professional person and a friend of respondent..." Further, in many commitment cases public defenders may not see or talk to their clients until the day of the commitment hearing. This is usually a circumstance of scheduling and travel problems across Montana, given that it is a long way from Glasgow to Warm Springs for example. Many District Courts still do not appoint a friend despite a Montana Supreme Court ruling recommending same. I also have to wonder as a mental health professional, how a person with acute psychosis for example, can "voluntarily express a desire to waive their <sup>person's</sup> rights at the hearing"? There are many other matters of law and due process of concern here. I think more thought should be given to this revision.



**53-21-129 Emergency situation (1) and (2)** currently allows a peace officer to take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody or (if revised as in House bill no.16) (inability to care for self) only for sufficient time to contact a professional person for emergency evaluation. But there are several areas of Title 53 where language contradicts. I will outline a few of these conflicts as follows. Specifically by who is such custody performed? The peace officer or the professional person? Because in (2) it says a person may be detained and treated. By who and where exactly? Is the peace officer responsible for finding a mental health professional person in many rural areas of Montana where none such professionals exist? Further, 53-21-124 (1) says "The court may not order detention of a respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention." Specifically where is that allegedly mentally disordered person detained and treated until the next regular business day? 53-21-120 (2) Does speak to this dilemma: "Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence." But many Montana counties have no such facilities.

Do professional persons actually have the legal power to detain anyone before receiving such a petition and then authority from the county attorney (as stated later in this statute in (3)? My older version of 53-21-129 (4) gives the notion that the state hospital "shall direct the person to the appropriate facility to which the person must be transported for emergency detention"? When I read this area of Title 53 I really have to start to wonder who really is in charge of the patient here. This section seems to introduce too many powerful players and too many confusing options in the midst of an emergency mental health situation. All stakeholders seem to be in a confusing arena under cloak of statutory authority. More clarification is needed here and in the Administrative Rules of Montana at 20.14.509.

53-21-129(2) says the county attorney...shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. However, if a person is "detained and treated" till the next regular business day", by a peace officer or a professional person before contacting a county attorney, does this then constitute a "Taking" as in any other civil rights dilemma? Does such detention then compel a Miranda reading by either the peace officer or the professional person? Again, more clarification is needed here.

Nonetheless, as we speak, there are insufficient mental health facilities in most rural and urban areas of Montana. And most if any of these facilities lack the ability to accept a 'detained' person. This is an important logistical consideration since House bill No. 16 may allow for more people with a mental illness rendering their inability to care for themselves entering into services.

Please be also advised that many medical illnesses can mimic mental health issues. The State Hospital demands medical examinations before accepting a new patient as do most hospital inpatient psychiatric facilities. Good patient care must allow for medical exams and mental evaluations. Statute here should be revised to include medical care with emergency mental health evaluation. Primarily though, it would be a good idea to somehow define in these statutes exactly what constitutes 'custody', 'detained and treated', and the exact powers of peace officers and the professional person in emergency mental health situations.

Thank you for your time and benevolence for Montanans afflicted with mental health issues.